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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,498	04/04/2001	Loralei Marie Brandt	J6497(C)	3031

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
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EXAMINER
BERMAN, ALYSIA

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 10/02/2002 //

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/826,498	Applicant(s) BRANDT ET AL.	
	Examiner Alysia Berman	Art Unit 1617	

-- The MAILING DATE of this communication appears on th cover she t with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 August 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *14-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 20, 2002 has been entered.

Claims 14, 15 and 17 have been amended. Claims 14-17 are pending.

Specification

The use of the trademark Polymer 1163™, among others, has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner that might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14-17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

application was filed, had possession of the claimed invention. The specification does not provide a written description of a saccharide with greater than 55 monomer units.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 is indefinite because it depends from canceled claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,985,294 (294)

US '294 is directed to hair styling compositions (abstract). The compositions contain about 0.01-20% of a non-silicone polymer and may also contain about 0-55% of a C1-3 monohydric alcohol (abstract). For methacrylamidopropyl dimethylamine-vinylpyrrolidone copolymer (PVP/DMAPA) and hydroxyethyl cellulose see column 4, lines 46-59. US '294 discloses at column 3, lines 54-56 that mixtures of the non-silicone polymers can be used. For ethanol see the examples. US '294 discloses conventional methods of using the compositions that include applying the composition to hair before and/or after the hair is dried and styled.

US '294 does not teach a composition comprising the instantly claimed holding polymer, a saccharide with greater than 55 monomer units and a carrier as instantly claimed or the instantly claimed ratios of holding polymer to saccharide. US '294 also does not explicitly teach a method of using the composition comprising all of the steps in the exact order claimed. US '294 does disclose that all of the instantly components can be used in hair styling compositions. US '294 discloses at column 20, lines 6-24 that the compositions are used in any conventional manner. US '294 also discloses the steps of applying the composition to wet or dry hair before and/or after it is dried and styled or shaped. It is well-known and common practice to contact hair with a hair styling composition, shape the hair, dry the hair and comb the hair.

The monomer units of the saccharide and the ratio of polymer to saccharide are not given patentable weight absent evidence to the contrary. It is within the skill in the

art to select optimal parameters in a composition in order to achieve a beneficial effect. *In re Boesch*, 205 USPQ 215 (CCPA 198). It would have been obvious for one skilled in the art to vary the proportions of components in a composition to arrive at the best compositions for the intended purpose. "It is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Only if the "results optimizing a variable" are "unexpectedly good" can a patent be obtained for the claimed critical range. *In re Antonie*, 559 F.2d 618, 620, 195 USPQ 6, 8 (CCPA 1977); see also *In re Dillon*, 919 F.2d 688, 692, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (in banc). Applicant has not provided any evidence of record comparing the instant invention to the closest prior art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to prepare the hair styling composition of US '294 using PVP/DMAPA, hydroxyethylcellulose and a C_{1-3} monohydric alcohol such as ethanol for use in a conventional manner expecting to obtain stable hair styling compositions without unacceptable stiffness and stickiness that provide a natural look and feel.

Double Patenting

The double patenting rejection is withdrawn in view of the fact that copending Application No. 09/275,149 has been abandoned.

Response to Arguments

Applicant's arguments with respect to claims 14-17 have been considered but are moot in view of the new ground(s) of rejection.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alysia Berman whose telephone number is 703-308-4638. The examiner can normally be reached Monday through Friday between 9:00 am and 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 or 703-872-9307 for after-final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234 or 703-308-1235.

Alysia Berman
Patent Examiner
September 25, 2002

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200